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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in resolution 65/221, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law, including in a number of specific areas. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the Counter-Terrorism Implementation Task Force, its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and its Executive Directorate, the Human Rights Council with its various special procedures mandates and other mechanisms, the human rights treaty bodies, and the Office of the United Nations High Commissioner for Human Rights. It reports on the consideration by the United Nations human rights system of issues relating to countering terrorism, including compliance of legislation, policies and practices for countering terrorism with international human rights law.

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I. Introduction

1. In its resolution 65/221, the General Assembly, inter alia, (a) expressed serious concern at the occurrence of violations of human rights and fundamental freedoms, as well as international refugee and humanitarian law, committed in the context of countering terrorism; (b) urged States countering terrorism to fully comply with their obligations under international law, including with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; ensure that all persons deprived of liberty benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees; ensure that no form of deprivation of liberty places a detained person outside the protection of the law; ensure due process obligations and the right to a fair trial; safeguard the right to privacy; protect all human rights, including economic, social and cultural rights; respect non-refoulement obligations; ensure legality in the criminalization of acts of terrorism; and ensure the right to an effective remedy; (c) recognized the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened to enhance their efficiency and transparency; (d) urged States to ensure the rule of law and to include adequate human rights guarantees in their national listing procedures; (e) requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness of the need to protect human rights and the rule of law while countering terrorism; (f) encouraged the Security Council and its Counter-Terrorism Committee to strengthen dialogue with relevant human rights bodies, in particular with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies; and (g) called upon United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism.

2. I was requested to submit a report on the implementation of resolution 65/221 to the General Assembly at its sixty-sixth session. The present report also responds to the request of the former Commission on Human Rights for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the Counter-Terrorism Implementation Task Force, its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and its Executive Directorate, the Human Rights Council with its various special procedures mandates and other mechanisms, the human rights treaty bodies, and OHCHR.

II. Recent developments in the United Nations in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

3. The Counter-Terrorism Implementation Task Force continues to play a crucial role in facilitating and promoting coordination and coherence in the implementation of the Global Strategy at the national, regional and global levels. In this connection, the Working Group on Protecting Human Rights while Countering Terrorism led by OHCHR[1] continues to assist States in implementing the human rights aspects of the United Nations Global Counter-Terrorism Strategy,[2] in particular those contained in its fourth pillar, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism".

4. In the Global Counter-Terrorism Strategy and Plan of Action, States resolved to "make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with (...) obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms [...]."[2] In this context, the Working Group on Protecting Human Rights while Countering Terrorism is organizing a series of five expert regional symposia, with State participation, on the protection of human rights aimed at securing the fundamental principles of a fair trial in the context of countering terrorism, with particular reference to international standards, jurisprudence and practice. Through regional and international expertise, and a regional focus, the five symposia aim to examine specific thematic issues, draw conclusions and make recommendations based on international standards.

5. All expert symposia are being held at the regional level on a rotating basis to facilitate meaningful participation of regional and national experts and practitioners who work specifically on the issues examined and can provide key first-hand practical knowledge of the challenges and complexities encountered, as well as good practices to be recommended. The symposia focus on various aspects of the protection of the right to a fair trial in the context of countering terrorism, including issues linked to the universality and non-derogable aspects of the right to a fair trial; the use of ordinary criminal law to try persons suspected of terrorist acts; respect for the principle of legality; the relationship between intelligence and law enforcement agencies; the rights of persons detained and/or persons tried for acts of terrorism; the question of independence and impartiality of courts in the context of trials related to offences of terrorism; the issue of proscription of organisations; and targeted sanctions at the national level.

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[1] Other members include the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee Executive Directorate, the Office of Legal Affairs of the United Nations Secretariat, the United Nations Interregional Crime and Justice Research Institute, the World Bank, the International Maritime Organization and the 1267 Monitoring Committee. The Office for the Coordination of Humanitarian Affairs and the International Criminal Police Organization (INTERPOL) participate as observers.

[2] General Assembly resolution 60/288.

6. The first regional expert symposium took place in Bangkok, on 17 and 18 February 2011, and was attended by 60 participants from the South-East Asia region (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam), including judges, prosecutors and Ministry of Justice officials, defence lawyers, international law experts, civil society representatives, and members of the Counter-Terrorism Implementation Task Force. Participants assessed the challenges to implementing the right to a fair trial in the context of counter-terrorism as set out in international law, identified key rights to protecting the right to a fair trial in countering terrorism and shared good practices. As a result of this event, an initial set of observations and good practices will be issued by the Working Group to offer guidance to Member States.

7. During the reporting period, the Working Group on Protecting Human Rights while Countering Terrorism issued two basic human rights reference guides on the stopping and searching of persons in the context of countering terrorism, and on security infrastructure.[3] Three more are being developed on detention in the context of counter-terrorism; the principle of legality in national counter-terrorism legislation; and the proscription of organizations. These guides aim to provide guidance to State authorities, national and international non-governmental organizations, legal practitioners, and United Nations agencies, as well as individuals, on how human rights-compliant measures may be adopted in a number of counter-terrorism areas.

8. The Working Group has also continued to engage with civil society on issues related to the implementation of the human rights aspects of the Global Strategy. Given that the activities of civil society are vital to increasing awareness about the threats of terrorism, more effectively tackling these threats and for ensuring respect for human rights and the rule of law, the Task Force's engagement with civil society, non-governmental organizations and human rights defenders is crucial to informing the assistance provided by the Task Force and its working groups.

9. Other working groups of the Counter-Terrorism Implementation Task Force[4] also continue to address human rights issues in their work, including the Working Group on Supporting and Highlighting Victims of Terrorism, the newly established Working Group on Border Management Relating to Counter-Terrorism, the Working Group on Countering the Use of the Internet for Terrorism Purposes, and the integrated assistance for countering terrorism initiative. The Working Group on Preventing and Resolving Conflicts has organized a series of meetings on the implementation of the Global Counter-Terrorism Strategy in the Central Asia region. The first of these meetings took place in December 2010 in Bratislava, and focused on pillars I ("Measures to address the conditions conducive to the spread of terrorism") and IV ("Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism") of the Global Counter-Terrorism Strategy. It included working sessions on the topic of ensuring respect for human rights and the rule of law, including good governance, to address conditions conducive to the spread of terrorism. A second meeting took place in

[3] See A/65/224, paras. 5-6.

[4] A list of all Working Groups of the Counter-Terrorism Implementation Task Force is available at: http://www.un.org/terrorism/workinggroups.shtml.

Dushanbe, in March 2011, and was dedicated to pillar II ("Preventing and combating terrorism") of the Strategy.

B. Counter-Terrorism Committee/Counter-Terrorism Committee Executive Directorate

10. The Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate continue to take relevant human rights concerns into account in their work programmes focused on the implementation of Security Council resolutions 1373 (2001) and 1624 (2005). Security Council resolution 1963 (2010), adopted on 20 December 2010, further extended the mandate of the Counter-Terrorism Committee Executive Directorate until 31 December 2013. The resolution also reminded States that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort. It also noted the importance of respect for the rule of law so as to effectively combat terrorism. The resolution encouraged the Counter-Terrorism Committee Executive Directorate to further develop its activities in this area, to ensure that all human rights issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly in all its activities. In this connection, the Counter-Terrorism Committee Executive Directorate also continued its active participation in the work of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism.

11. In line with the mandate provided by the General Assembly in its resolution 65/221, the Counter-Terrorism Committee Executive Directorate continued to liaise with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and other human rights entities. The Executive Directorate also continued its dialogue on relevant human rights issues with regional and subregional organizations. From 19 to 21 April 2011, the Council of Europe hosted a meeting of the Counter-Terrorism Committee on the theme of "Prevention of Terrorism", to which international, regional and subregional organizations were invited. Both OHCHR and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism participated.

12. In November 2010, the Counter-Terrorism Committee Executive Directorate organized a regional workshop for representatives of police forces, prosecutors and counter-terrorism focal points of South Asian countries at the Jakarta Centre for Law Enforcement Cooperation, in Indonesia. The event focused on the effective use of community policing techniques in countering terrorism and the latest developments in mobile-phone technology as it pertains to counter-terrorism. The workshop also addressed in detail the role of counter-terrorism coordinators and focal points in enhancing counter-terrorism cooperation in national and international contexts. OHCHR supported the event by facilitating the participation of a human rights expert.

13. Furthermore, in May 2011, the Counter-Terrorism Committee Executive Directorate organized a regional workshop for senior law enforcement and prosecution officials and judges in South Asia, in Thimphu, Bhutan. During the workshop, participants discussed the role of the police and prosecution services in

combating terrorism and the challenges faced by those services in leading effective investigations and prosecutions. The workshop also provided an opportunity to raise the awareness of police and prosecution services regarding the latest available investigation technologies and techniques, and to share relevant experience and good practice. A representative of OHCHR contributed to the event, drawing the participants' attention to applicable international human rights standards with regard to investigations and prosecutions.

C. Human Rights Council

14. At its fifteenth session, the Human Rights Council decided, in its resolution 15/15, to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for a period of three years, and requested the Special Rapporteur, among other tasks, to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms.[5]

15. At the same session, the Human Rights Council, in resolution 15/18 on the issue of arbitrary detention, encouraged all States to ensure that the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before a court, so that it may decide without delay on the lawfulness of detention and order release if the detention is not lawful, is equally respected in cases of administrative detention, including those under public security legislation. Furthermore, the Human Rights Council adopted resolution 15/28 on assistance to Somalia in the field of human rights and urged the Transitional Federal Government, Member States, stakeholders and the entire international community to continue to isolate and take all required measures against individuals and entities whose actions threaten the peace, security or stability of Somalia and of the region, including those engaged in terrorist acts, while ensuring that any measure taken to counter terrorism complies with international law.

16. On 11 March 2011, at its sixteenth session, the Human Rights Council held a panel discussion[6] pursuant to its decision 15/116 on the issue of human rights in the context of action taken to address terrorist hostage-taking, with a special focus on the primary responsibility of States to promote and protect human rights for all in their jurisdiction, the strengthening of international cooperation to prevent and combat terrorism and the protection of the rights of all victims of terrorism involved. The panel discussion was intended to increase awareness and understanding of the human rights aspects of hostage-taking when committed in the context of terrorist activities.

17. The panel discussion was moderated by Sihasak Phuangketkeow (Thailand), President of the Human Rights Council, and opened by the Deputy High Commissioner for Human Rights, Kyung-wha Kang. The panellists were Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Kamel Rezzag-Bara, Adviser of the President of the People's Democratic Republic of Algeria; Commissioner Cecilia R.V. Quisumbing, National Human Rights Commission of the Philippines;

[5] See paras. 22-25 of the present report.

[6] A summary of the panel discussion is available in A/HRC/18/29.

Soumeylou Maiga, President of the Sahel Observatory of Geostrategy and Security of Mali; and Federico Andreu-Guzmán, Deputy Director of the Litigation and Legal Protection Section, Colombian Commission of Jurists.

18. Also at its sixteenth session, the Human Rights Council, in its resolution 16/23 of 25 March 2011, condemned, in particular, any action or attempt by States or public officials to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urged States to ensure accountability for all such acts. It further reminded States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urged all States to respect the safeguards concerning the liberty, the security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.

19. On 1 June 2011, during its seventeenth session, the Human Rights Council held a panel discussion on the issue of human rights of victims of terrorism, taking into account, inter alia, the recommendations of the Symposium on Supporting Victims of Terrorism, convened by the Secretary-General and held on 9 September 2008, pursuant to Council decision 16/116. The objective of the panel discussion was to enhance understanding of the issue of human rights of victims of terrorism, exchange information on relevant efforts undertaken at international, regional and national levels, and share good practices with a view to increasing the capacity of States to respond to the needs for the protection of the rights of victims of terrorism and their families, while taking into account their international human rights obligations.

20. The panel discussion was moderated by Mr. Phuangketkeow (Thailand), President of the Human Rights Council, and opened by Navanethem Pillay, United Nations High Commissioner for Human Rights. The following panellists made presentations: Anne Wu, Political Affairs Officer, Counter-Terrorism Implementation Task Force Office, Department of Political Affairs; Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Maite Pagazaurtundua, Victims of Terrorism Foundation of Spain; Rianne M. Letschert, Professor of International Law and Victimology and Deputy Director of the International Victimology Institute, Tilburg, University of Tilburg, the Netherlands; Mauro Miedico, Coordinator, Specialized Terrorism Prevention Unit, Terrorism Prevention Branch, United Nations Office on Drugs and Crime; and Yakin Erturk, Member of the Committee on the Prevention of Torture of the Council of Europe and former Special Rapporteur on violence against women. As requested by the Human Rights Council in its decision 16/116, OHCHR will prepare a summary of the panel discussion to be submitted to the nineteenth session of the Human Rights Council.

Universal periodic review

21. The Human Rights Council also considered the issue of the protection of human rights and fundamental freedoms while countering terrorism under the universal periodic review. Some of the most prevalent recommendations of the Human Rights Council called for the alignment of domestic counter-terrorism laws

with international human rights standards and obligations,[7] pointing particularly to the need for a review of the legislative framework to combat terrorism.[8] States were also recommended to halt serious violations of human rights and humanitarian law committed under the pretext of combating terrorism.[9] Concerns were raised about the prosecution of those arrested for terrorist crimes in exceptional tribunals or jurisdictions, highlighting that they must be brought before legally-established judicial bodies, with the protection of due process.[10] Furthermore, Member States were encouraged to investigate allegations of torture in the context of counter-terrorism measures, to give publicity to the findings, to bring perpetrators to justice and to provide reparation to the victims.[11] In addition, the Human Rights Council called for the enactment of legislation, consistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encompassing acts described as "enhanced interrogation techniques".[12] It also recommended an open and transparent assessment of the consequences of flights conducted over the respective State's national territory and landings that took place in the context of the Central Intelligence Agency extradition programme.[13] Moreover, capital punishment sentences for terrorism convictions were raised as a concern.[14] Other recommendations highlighted the need to avoid religious and racial profiling, while defending against terrorism, through the promulgation of prohibitive legislation.[15] In this connection, it was also suggested to "smarten" security checks so as to avoid discrimination.[16] Furthermore, it was proposed that States organize human rights-based training sessions to educate relevant authorities, in order to improve counter-terrorism practices.[17] Finally, Member States were called upon to respond and act on recommendations made by the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.[18]

Special procedures

22. In his report to the sixteenth session of the Human Rights Council (A/HRC/16/51), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presented a compilation of 10 best practices in countering terrorism in the form of legislative models. The compilation is the outcome of analysis undertaken by the Special Rapporteur on the basis of his work conducted over six years and involving various forms of interaction with multiple stakeholders, in particular written submissions from Governments (see A/HRC/16/51/Add.4). The compilation draws upon international treaties, resolutions of international organizations and the jurisprudence of

[7] A/HRC/16/11 and Add.1, para. 92.58; A/HRC/17/10 and Add.1, para. 86.139.
[8] A/HRC/17/10 and Add.1, paras 86.137, 86.138; see also A/HRC/18/4, para. 106.133, regarding an evidence-based evaluation of the anti-terrorism legislation.
[9] A/HRC/16/11 and Add.1, para. 92.217.
[10] Ibid., para. 92.218.
[11] A/HRC/17/10 and Add.1, para. 86.136.
[12] A/HRC/16/11 and Add.1, para. 92.66.
[13] A/HRC/18/4, para. 106.132.
[14] A/HRC/16/3 and Add.1, paras. 78.6, 78.9, 78.19.
[15] A/HRC/16/11 and Add.1, para. 92.219.
[16] Ibid., para. 92.220.
[17] A/HRC/17/7 and Add.1, para. 89.98.
[18] A/HRC/16/11 and Add.1, para. 92.90.

international and regional courts. In his report, the Special Rapporteur concludes that, beyond such models, best practices could also be identified in other forms, above all in the adoption of national counter-terrorism strategies that need to go beyond good laws and require a comprehensive approach, rooted in human rights and addressing also conditions conducive to the spread of terrorism, in line with the Global Counter-Terrorism Strategy. The model provisions refer to: consistency of counter-terrorism law with human rights, humanitarian law and refugee law; consistency of counter-terrorism practices with human rights, humanitarian law and refugee law; the principles of normalcy and specificity; review of the operation of counter-terrorism law and practice; effective remedies for violations of human rights; reparations and assistance to victims; the definition of terrorism; a model offence of incitement to terrorism; core elements of best practice in the listing of terrorist entities; and core elements of best practice in arrest and interrogation of terrorist suspects.

23. At the invitation of the Government, the Special Rapporteur conducted a visit to Tunisia from 22 to 26 January 2010 (see A/HRC/16/51/Add.2). The Transitional Government invited the Special Rapporteur for a second visit that took place from 22 to 26 May 2011. In his press statement of 26 May at the conclusion of his follow-up mission, the Special Rapporteur stressed the need to carry out necessary reforms within the counter-terrorism framework in compliance with international human rights law. He called for measures to combat impunity and secure accountability for crimes and human rights violations committed in the name of counter-terrorism. These measures include the continuation of ex officio investigations into allegations of torture and illegal detention, which were often conducted under the pretext of the fight against terrorism, and holding those responsible accountable to help rebuild trust between the population and the security forces in the country. The Special Rapporteur stated that the abusive anti-terrorism law of 2003 has largely not been used since the events of 14 January 2011. According to the Special Rapporteur, the Transitional Government had acknowledged, by adopting an amnesty law covering those who were convicted or held under the anti-terrorism law, that this law did not provide more security to the Tunisian people, but rather was used as a tool of oppression against any form of political or other dissent. The Special Rapporteur offered the assistance of his mandate to replace the 2003 law with a proper legislative framework that regulates Tunisia's anti-terrorism efforts in line with international conventions and protocols on countering terrorism, while fully respecting human rights and fundamental freedoms. Further referring to his previous report (see A/HRC/16/51/Add.2), in which he had expressed grave concern about the activities of various entities of the security apparatus and the secrecy and impunity in which they operated, the Special Rapporteur commended the abolishment by the Transitional Government of the Directorate for State Security as an entity, allegedly responsible for activities of torture and arbitrary and even secret detention, and of the "political police", which had not existed in the law, but was used as a term to describe those elements in the security organs related to the Ministry of the Interior that had been responsible for cracking down on political and human rights activists and other dissent.

24. At the invitation of the Government, the Special Rapporteur conducted a visit to Peru from 1 to 8 September 2010. In his report (A/HRC/16/51/Add.3 and Corr.1), the Special Rapporteur examined measures taken by Peru to support victims of terrorist crimes and human rights violations committed by State security forces

during the internal armed conflict between 1980 and 2000. He also analysed the legislative framework for countering terrorism and its application and implementation in practice. The Special Rapporteur concluded that Peru provides important lessons with regard to the provision of justice and compensation for the suffering caused by the internal armed conflict and that the establishment of the Truth and Reconciliation Commission can be considered as a best practice. The criminal trial and sentencing of the former President of Peru and his aides, and the numerous retrials of terrorism convicts previously convicted in unfair trials, constitute significant steps forward in the State's compliance with its obligations under international human rights standards. The Special Rapporteur was concerned, however, about the broad definition of terrorism contained in criminal legislation, the slow progress made in the implementation of the reparations scheme, and the tendency to associate human rights defenders and social protest movements with terrorism. He emphasized that resorting to states of emergency and the deployment of military forces not only as a counter-terrorism measure, but also in situations of mass demonstrations, poses a risk of militarization of conflicts that should not be resolved by the armed forces. The Special Rapporteur welcomed the decision of Congress to repeal Legislative Decree No. 1097 adopted by the executive branch pursuant to delegated legislative authority, as the Decree could have allowed for the discontinuation (*sobreseimiento*) of criminal proceedings for human rights violations committed during the internal armed conflict, and appeared to have subjected crimes covered by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity to a statute of limitations.

25. The report of the Special Rapporteur to the General Assembly at its sixty-fifth session (A/65/258) addressed the question of compliance with human rights standards by the United Nations when countering terrorism, taking stock of and assessing the role and contributions of, inter alia, the General Assembly, the Counter-Terrorism Implementation Task Force, the Human Rights Council, the Security Council and its subsidiary bodies, and United Nations field presences in the promotion and protection of human rights in the context of their counter-terrorism activities. The main recommendation contained in the report was that the Security Council should seize the opportunity of the approaching tenth anniversary of its resolution 1373 (2001) to replace resolutions 1373 (2001), 1624 (2005) and 1267 (1999) (as amended) with a single resolution, not adopted under Chapter VII of the Charter of the United Nations, in order to systematize States' counter-terrorism measures and reporting duties of States under a single framework. This proposal was motivated by the assessment of the Special Rapporteur that Chapter VII of the Charter does not provide the proper legal basis for maintaining the current framework of mandatory and permanent Security Council resolutions of a quasi-legislative or quasi-judicial nature. The report also addressed ways and means of improving human rights accountability of the United Nations for its field operations, including in the context of countering terrorism, as well as the contributions of various actors towards the implementation of the 2006 United Nations Global Counter-Terrorism Strategy.

26. In its report to the Human Rights Council (A/HRC/16/47 and Add. 1-3 and Corr.1), the Working Group on Arbitrary Detention stressed the far-reaching impact of the joint study on global practices in relation to secret detention in the context of countering terrorism (see A/HRC/13/42 and A/65/224, para. 13), particularly in relation to its mandate and instances of arbitrary deprivation of liberty. It noted with

concern that cases of secret detention are regularly accompanied by the absence of legal guarantees, habeas corpus and fair trial. The Working Group has reiterated the need for the application of a strict test and close scrutiny when considering cases containing general and vague references to terrorism by Governments as a justification for restricting human rights. The Working Group made reference to three Opinions adopted under its individual complaints procedure during the period under consideration that directly concerned cases of persons detained on terrorism-related charges, holding the deprivation of liberty to be arbitrary in all of them (Opinion No. 22/2010, see A/HRC/16/47/Add.1, and Opinions No. 24/2010 and 32/2010, see A/HRC/16/47, para. 9, Table 1).

27. The then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his report to the General Assembly (A/65/273), expressed concern that in order to combat increasing levels of crime, terrorism and other forms of organized crime effectively, Governments in too many countries seemed willing to restrict certain human rights by granting their law enforcement and intelligence agencies and security forces very extensive powers. He argued that this leads to an environment conducive to undermining the absolute prohibition of torture. The brutalization of many societies has reached a level where torture is simply regarded by Governments and the population at large as the "lesser evil". The Special Rapporteur noted that this trend is alarming. He emphasized that there was a need for a global awareness-raising campaign to change this climate of tolerance towards excessive use of force by law enforcement officials. Governments needed to be reminded that torture is not an effective means of combating crime. On the contrary, it contributed to the further brutalization of societies and the spiral of violence that many societies suffered from. In his first report to the Human Rights Council (A/HRC/16/52), the newly appointed Special Rapporteur indicated his intention to identify and further develop the linkages between forensic and other sciences, not only with a view to eradicating torture and providing corroborating evidence of torture, but also to offer States credible forensic and other scientific alternatives to employ in law enforcement, counter-terrorism and effective criminal prosecution.

28. The former Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly (A/65/321, paras. 11-16), addressed the question of targeted killings and accountability, including in the context of countering terrorism. He expressed concern that since the presentation of his report to the Human Rights Council at its fourteenth session on the issue of targeted killing (A/HRC/14/24/Add.6), no concrete information had been provided by Member States in relation to any of the basic questions raised in the Special Rapporteur's report.

29. In his report to the Human Rights Council, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised concerns regarding limitations imposed on the right to freedom of expression through the Internet on the grounds of countering terrorism (A/HRC/17/27). He noted that existing criminal laws, or new laws specifically designed to criminalize expression on the Internet, were often justified under the notion of countering terrorism, but "in practice are used to censor content that the Government and other powerful entities do not like or agree with." The Special Rapporteur stressed that the protection of national security or the need to combat terrorism could not be used to justify restricting the right to freedom of expression, unless the Government could

demonstrate that (a) the expression was intended to incite imminent violence; (b) it was likely to incite such violence; and (c) there was a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

30. The Special Rapporteur on the situation of human rights defenders addressed the issue of stigmatization of human rights defenders by non-State actors in her report to the General Assembly (A/65/223). The Special Rapporteur pointed to the fact that in the context of civil conflict paramilitaries often attempted to stigmatize the work of human rights defenders and legitimize campaigns of violence against them by alleging that they were associated with armed groups or "terrorists". She stated that, in such instances, it was vital that Governments publicly reaffirmed the importance of the work carried out by human rights defenders and denounced any attempts at its delegitimization or stigmatization. In her report to the Human Rights Council (A/HRC/16/44, Add. 1-2 and Corr.1), the Special Rapporteur raised the issue of stigmatization and criminalization of the work of women human rights defenders. She stated that, aside from the "political" stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, foreign countries or interests, women human rights defenders often faced further stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocated.

31. The Special Rapporteur on freedom of religion or belief, in the report to the General Assembly (A/65/207, para. 39), voiced concerns about reports that Muslims were, in the context of counter-terrorism measures, regularly subjected to screening of their personal data, house searches, interrogation and arrest solely because of their religious affiliation. The Special Rapporteur emphasized that profiling practices based on ethnicity, national origin and/or religion regularly failed to meet the requirement of a proportionate means of countering terrorism and also entailed considerable negative consequences that may render these measures counterproductive in the fight against terrorism.

Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the activities of private military and security companies

32. By resolution 15/26 of 1 October 2010, the Human Rights Council established an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, the monitoring and the oversight of the activities of private military and security companies, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Council decided that the open-ended intergovernmental working group would hold a session of five working days a year for a period of two years and present its recommendations at the twenty-first session of the Human Rights Council. Pursuant to the resolution, the first session of the working group took place from 23 to 27 May 2011.

D. Human rights treaty bodies

33. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination continued to examine the compliance of State parties' legislation and practices with their respective human rights treaty obligations in the context of countering terrorism.

34. The issues addressed by the Human Right Committee and the Committee against Torture predominantly concerned overly broad and unclear definitions of terrorism offences in national legislation.[19] Furthermore, the Human Rights Committee expressed concern at State's intentions to adopt anti-terrorism legislation allowing for significant delays before trial, before providing access to a lawyer and for decisions on the extension of detention to be taken, in exceptional circumstances, in the absence of a suspect.[20] In this connection, the Committee recommended that any person arrested or detained on a criminal charge, including persons suspected of security-related offences, had immediate access to a lawyers and immediate access to a judge.[20] It also highlighted the issue of legislation that permitted judges to withhold evidence from the detainee owing to security concerns, and underscored the importance of access to all evidence, including classified evidence, and suggested to possibly introduce a regime of special advocates.[20] Moreover, the Human Rights Committee emphasized its concern regarding the limited organizational and functional independence of State security courts and the power of the executive to refer cases that did not affect State security to these courts.[21]

35. The Committee against Torture expressed deep concern at allegations of routine use of torture employed by police, prison officers, security forces and military personnel, against alleged terrorists.[22] Further, it pointed to credible reports indicating that these acts frequently occurred with the participation, at the instigation, or with the consent of, commanding officers in police stations, detention centres, prisons and military bases and in unofficial or secret places of detention.[22] The Committee therefore urged the relevant State party to take immediate and effective measures to investigate, prosecute and punish all acts of torture.[22] Legislation unduly restricting legal safeguards against torture and ill treatment for persons suspected of, or charged with, a terrorist or related crime, while simultaneously providing the police with broad powers to arrest suspects without a court warrant, has given the Committee against Torture additional cause for concern.[23] Regarding the deprivation of rights for alleged terrorists in detention, the Committee has urged States to allow detainees immediate access to a lawyer, adequate time to prepare for trial, independent medical examination that includes patient–doctor confidentiality, and family notification of detention.[24] The Committee criticized practices of detention and incidents of ill treatment of children in unrecorded adult pre-charge facilities and interrogations without legal assistance

[19] See CCPR/C/HUN/CO/5, para. 9; CCPR/C/ISR/CO/3, para. 13; CCPR/C/POL/CO/6, para. 4; CCPR/C/JOR/CO/4, para. 6; CAT/C/MCO/CO/4-5, para. 14.
[20] See CCPR/C/ISR/CO/3, para. 13.
[21] CCPR/C/JOR/CO/4, para. 12.
[22] CAT/C/ETH/CO/1, para. 10.
[23] Ibid., para. 14.
[24] CAT/C/TUR/CO/3, para. 11.

or the presence of an adult or a legal guardian.[25] The Committee also noted reports about frequent interference by the executive branch with the judicial process, in particular in criminal proceedings, and reported cases of harassment, threats, intimidation, and dismissal of judges who have resisted political pressure and/or, ordered the release of defendants charged with terrorist or State crimes.[26] Furthermore, it expressed concern at the admission of evidence and confessions obtained through torture, and recommended that necessary steps be taken to ensure that, in practice, such confessions and evidence are not admitted in court proceedings, including in cases falling under counter-terrorism regulations.[27]

36. Other issues of concern for treaty bodies included disproportionate use of force when responding to terrorist threats causing collateral deaths;[28] demolition of property and homes of families of terrorist suspects;[29] the abduction of alleged terrorist suspects;[30] the restriction in places of detention of certain privileges relating to group activities for persons accused of, or convicted for, terrorist offences;[31] practices of racial profiling as part of national security measures that may contribute to increased stigmatization of certain groups;[32] the prosecution of children for their association with armed groups under counter-terrorism provisions;[33] and the lack of a strict and narrow definition of conditions for declaring an emergency and limitation to exceptional circumstances.[34] Of particular concern with regard to emergency laws were child-related abuses such as detention for over a year, denial of a lawyer,[35] trials before military courts,[36] and the impact of emergency regulations on the enjoyment of economic, social and cultural rights.[37]

III. Activities of the United Nations High Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights

37. In carrying out her mandate, the United Nations High Commissioner for Human Rights has continued to examine the question of the protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations about the obligations of States in this regard. In her report to the Council at its sixteenth session (A/HRC/16/50), the High Commissioner expressed her continued deep concern at the erosion of respect for due process, including the right to a fair trial, in the context of counter-terrorism policies and practices. While noting that the newly established de-listing procedures, including the establishment of the Office of the Ombudsman to receive requests from individuals and entities

[25] Ibid., para. 21.
[26] CAT/C/ETH/CO/1, para. 22.
[27] Ibid., para. 31.
[28] CCPR/ISR/CO/3, para. 10.
[29] Ibid., para. 17.
[30] CAT/C/ETH/CO/1, para. 20.
[31] CAT/C/TUR/CO/3, para. 17.
[32] CERD/C/AUS/CO/15-17, para. 12.
[33] CRC/C/OPAC/LKA/CO/1, para. 39.
[34] CRC/C/LKA/CO/3-4, para. 10.
[35] CRC/C/OPAC/LKA/CO, para. 32.
[36] CRC/C/OPAC/EGY/1, para. 30.
[37] E/C.12/LKA/CO/2-4, para. 7.

seeking removal from the Consolidated List, represented an important step towards fair and clear procedures, the High Commissioner underlined the gulf between the 1267 regime and due process-related requirements in international human rights law and stressed that the need for more comprehensive reform remained.[38]

38. The High Commissioner therefore urged the Human Rights Council to continue to explore every avenue possible in order to ensure that sanctions imposed against individuals and entities were accompanied by rigorous procedural safeguards, which guaranteed minimum due process standards, for both listing and de-listing decisions. She further underlined that this should include ensuring full support to the Office of the Ombudsperson, while developing additional mechanisms to enhance due process protections for listing and de-listing procedures. It should also include the establishment of an independent, quasi-judicial procedure for review of listing and de-listing decisions.[39]

39. In the same report, the High Commissioner pointed to practices that impeded the right to a fair trial in the context of counter-terrorism, such as certain uses of intelligence in criminal justice processes.[40] While highlighting that the use of accurate intelligence is indispensable to prevent terrorist acts and bring individuals suspected of terrorist activity to justice, she underscored that the increased reliance on intelligence for countering terrorism and the advent of "intelligence-led law enforcement" in many countries has led to the expansion of intelligence authority, often without adequate consideration for the due process safeguards necessary to protect against abuses. In this connection, the High Commissioner also emphasized the challenges to human rights posed by the increased reliance by States on intelligence, including the abuse of the State secrecy doctrine in the context of legal proceedings, the use in legal proceedings of evidence obtained by illegal means, whether at home or abroad, and the use of secret evidence. In the meantime, she called upon States to ensure that regulatory frameworks are in place to guarantee compliance with international human rights law, both domestically and through intelligence cooperation with other States.

40. In addition to its activities as Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism in relation to pillar IV of the Global Counter-Terrorism Strategy, as reflected in section II.A of the present report, OHCHR has continued to strengthen the incorporation of a human rights approach into the common efforts regarding the other pillars of the Global Counter-Terrorism Strategy. In this connection, OHCHR participated in a symposium entitled "Taking Stock and Defining the Way Forward: Strengthening the Response to Terrorism by Addressing Connections with Related Criminal Activities", organized by the United Nations Office on Drugs and Crime in March 2011 in Vienna, with a presentation on how Member States could be supported, through technical assistance and cooperation, to respond to legitimate national security concerns in full compliance with the rule of law and human rights.

41. The High Commissioner for Human Rights also opened a Human Rights Council panel discussion on the issue of human rights of victims of terrorism that took place in June 2011,[41] while the Deputy High Commissioner delivered opening

[38] See A/HRC/16/50, paras. 16-21.
[39] Ibid., paras. 27 and 44.
[40] Ibid., paras. 33-40.
[41] See also paras. 19-20 of the present report.

remarks for a Council panel on the issue of human rights in the context of action taken to address terrorist hostage-taking that was held in March 2011.[42] In addition, the Deputy High Commissioner opened a side event to the sixteenth session of the Human Rights Council on the topic of human rights of victims of terrorism, in which another OHCHR representative participated as a panellist.

IV. Conclusions

42. **The United Nations High Commissioner for Human Rights, human rights treaty bodies, the Human Rights Council and its various special procedures have continued to express deep concerns with regard to remaining significant inconsistencies between domestic counter-terrorism legal frameworks and practices and international human rights standards, including vague and broad definitions of terrorism, lack of legal safeguards related to due process and fair trial guarantees, and practices of torture and ill-treatment of terrorist suspects. Reiterating my call on Member States to fully implement the Global Strategy on Counter-Terrorism, and to ensure respect for human rights and the rule of law as the fundamental basis of all counter-terrorism measures, I urge all States to ensure that their counter-terrorism measures comply with their obligations under international law.**

43. **Effective criminal justice systems based on respect for human rights and the rule of law, including due process and fair trial guarantees, continue to be the best means for effectively countering terrorism and ensuring accountability. I encourage States to actively participate in the regional expert symposia on the theme "Protection of human rights aimed at securing the fundamental principles of a fair trial in the context of countering terrorism", held under the auspices of the Working Group on Protecting Human Rights while Countering Terrorism, and to make use of the observations and good practices being developed in this process. I also encourage States and other stakeholders to take advantage of the basic human rights reference guides developed by this Working Group.**

44. **I encourage the Counter-Terrorism Implementation Task Force, its Working Groups and entities to continue to incorporate a human rights approach to, and address human rights issues and concerns in, their work, in line with the approach mandated by Member States in the Global Strategy and to ensure that the assistance provided by the Counter-Terrorism Implementation Task Force to respond to terrorism is effective, sustainable and compliant with international human rights law. In this context, the Counter-Terrorism Implementation Task Force should increase its engagement with civil society to inform the assistance provided by the Task Force and its working groups.**

45. **Building on Security Council resolution 1963 (2010), the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate are encouraged to continue their efforts to place respect for the rule of law and human rights at the core of the fight against terrorism in areas within the scope of their mandates. In this connection, efforts by the Counter-Terrorism Committee and its Executive Directorate to involve the Office of the High Commissioner for Human Rights in their activities are to be commended.**

[42] See also paras. 16-17 of the present report.